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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,244	04/06/2004	Rainer Herrmann	GMH/416/US	7479

2543 7590 12/08/2005

ALIX YALE & RISTAS LLP  
750 MAIN STREET  
SUITE 1400  
HARTFORD, CT 06103

EXAMINER
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NGHIEM, MICHAEL P

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/820,244

Applicant(s)

HERRMANN ET AL.

Examiner

Michael P. Nghiem

Art Unit

2863

*RW*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 1-7, 9-12, 14-16 and 20 is/are allowed.  
6) ☒ Claim(s) 8 and 17 is/are rejected.  
7) ☒ Claim(s) 13, 18 and 19 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

The Amendment filed on September 26, 2005 has been acknowledged.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Kraszewski et al. (US 5,554,935).

Regarding claim 8, Kraszewski et al. discloses an apparatus (Fig. 1) for determining the mass of portioned units of active substances (Abstract, lines 1-2), in particular capsules, tablets or dragees (3), which comprises a microwave generator (column 4, lines 21-22), a microwave resonator (10), a device for guiding the units of active substances through the microwave resonator (column 4, line 22), measuring and evaluation electronics (column 4, line 23) for determining the mass (Abstract, lines 1-2) from the displacement A of the resonant frequency (displacement between 1 and 2, Fig. 4a) and the broadening B of the resonance curve (left curve is broader than right curve, Fig. 4a),

and a device for removing individual units of active substances (means for separating, column 3, line 65 – column 4, line 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraszewski et al. in view of Mayer et al. (US 5,602,485).

Kraszewski et al. further discloses that the devices for guiding the units of active substances have a tube (5) through which the units of active substances are conveyed (Fig. 2).

However, Kraszewski et al. does not disclose that the units of active substances are conveyed by an air stream.

Nevertheless, Mayer et al. discloses that the units of active substances (14's) are conveyed by an air stream (Fig. 1) for the purpose of processing the capsules at a high rate of speed (column 1, lines 32-35).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Kraszewski et al. with a conveying air stream as disclosed by Mayer et al. for the purpose of processing the capsules at a high rate of speed.

### ***Allowable Subject Matter***

Claims 13, 18, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-7, 9-12, 14-16, and 20 are allowed.

### ***Reasons For Allowance***

The **combination** as claimed wherein the mass M is determined, with compensation of the influence of the moisture (claim 1) or a second microwave resonator with measuring and evaluation electronics for determining the mass of the units of active substances before filling (claim 13) or the devices for guiding the units of active substances have an endless belt with depressions, into which the units of active substances are inserted (claim 18) the devices for guiding the units of active substances

have a circular disk, on the circumference of which the units of active substances are held firmly with the aid of vacuum (claim 19) is not disclosed, suggested, or made obvious by the prior art of record.

### ***Response to Arguments***

Applicant's arguments filed on September 26, 2005 have been considered but are not persuasive.

With respect to the 35 USC 102 rejections, Applicants argue that Kraszewski does not employ "the displacement A of the resonant frequency and the broadening B of the resonance curve" to determine the mass of the recited "portioned units of active substances". Fig. 4a of Kraszewski is used to determine the peak of resonance, according to column 5, lines 32 – 38, rather than the mass of the object.

Examiner's position is that Kraszewski employs "the displacement A of the resonant frequency (displacement between 1 and 2, Fig. 4a) and the broadening B of the resonance curve (left curve is broader than right curve, Fig. 4a)" to determine the mass of the recited "portioned units of active substances" (Abstract, lines 1-2). Kraszewski teaches determining the peak of resonance (Fig. 4a) (column 5, lines 32 – 38). Kraszewski further teaches that the peak of resonance is used **to determine the mass of the object (column 4, lines 48-49).**

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P Nghiem whose telephone number is (571) 272-2277. The examiner can normally be reached on M-H.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2863

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Michael Nghiem", with a stylized flourish at the end.

**MICHAEL NGHIEM  
PRIMARY EXAMINER**

Michael Nghiem

December 5, 2005